

Policy underpinning the Public Health Bill (Northern Ireland) A Consultation Document – TUV response

TUV recognises that there is considerable public concern about what is contained in this consultation document. Should the proposals come before the Northern Ireland Assembly TUV will robustly oppose many of the suggestions. What follows is merely a highlighting of the policy proposals which make us most uneasy.

Although the proposals claim that they strike an appropriate balance between health and the rights of the individual in paragraphs 111 and 213¹, this is clearly not the case. In fact, when considered as a whole; it would appear that these paragraphs were added to the consultation document late in the day rather than being ideas uppermost in the minds of officials when drafting the proposals.

TUV is particularly concerned by the contents of paragraphs 141 to 144.² These sweeping powers go much too far.

TUV does not believe that the Minister of Health should have power to make domestic travel bans (paragraph 142 ³), nor do we believe that the Minister should have the power to make regulations which require a person to submit to a medical examination; be removed to a hospital or other suitable establishment; be detained in a hospital or other suitable establishment; keep a person in isolation or quarantine or require a person to be vaccinated or to receive other prophylactic treatment (paragraph 143 ⁴). All of these proposals raise profound civil liberties issues - as do other aspects of this paragraph relating to a “thing” ⁵ and premises.

Significantly, section 3A of 1967 Act required a resident magistrate to make an order that a person with a notifiable disease be removed to a hospital. TUV believe magistrates should continue to be involved in such cases.

TUV has deep reservations about the proposals as they relate to schools.

The proposal that a head teacher should be guilty of an offence if he or she fails to provide a list of the names, addresses and contact telephone numbers for all the pupils of that school, or such group of pupils attending that school as the PHA require (paragraphs 155 – 158 6) goes much too far and is something which does not appear in the 1967 Act. TUV sees no case for introducing this power.

TUV is opposed to imposing a requirement that people be vaccinated or receive prophylactic treatment as suggested (paragraph 172 7).

TUV is concerned that much too much power is vested in the Minister for Health in these proposals. We are also concerned about the desire to limit the opportunity for legislators to study proposals which come from his or her department. For example, paragraph 202 suggests there should be consultation across the UK on the “minimum amount of time needed to ensure proper scrutiny of draft affirmative regulations”.⁸ While we accept that there may be a need to react swiftly in the event of a health emergency, the draconian nature of measures which profoundly impact on civil liberties need to be carefully considered. Rushed legislation is often bad legislation and beginning from such a starting point does not bode well.

Notes

¹ 111. The review of the 1967 Act recommended that the new Public Health Bill aims to strike an appropriate balance between the state’s responsibility to protect the public’s health and the autonomy, rights and dignity of the individual. The Act preceded the development of human rights and data protection legislation in the United Kingdom. As such, it does not include a statutory requirement for a person to be provided with an explanation of the need for an action that interferes with their rights.

213. The 2016 Final Report of the Review of the 1967 Act highlighted the need to balance health protection and personal freedom. The Department has taken cognisance of these issues and this consultation document has highlighted throughout the safeguards and protections that have been into the proposed policy.

² **Restrictions/ emergency powers**

141. It is proposed that the Bill will make a provision at the start of this suite of provisions in relation to references to infection and contamination. These are described in paragraph 71 above.

142. The Bill will include regulation making powers allowing the Minister of Health to make domestic and international travel health protection regulations. The power in relation to domestic public health protection regulations may be exercised: in relation to infection or contamination generally, or in relation to particular forms of infection or contamination. The powers will enable regulations to be made of a general nature, to make contingency provision, or to make regulations specifically to respond to particular circumstances.

143. Domestic regulations may be made for the purposes of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection or contamination in Northern Ireland (whether from risks originating there or elsewhere).

The regulations may;

- impose restrictions or requirements on or in relation to **persons, things or premises** in the event of, or in response to, a threat to public health, or enable a Northern Ireland department, the Regional Agency or another person, by virtue of a decision taken under the regulations, to impose such restrictions or requirements.

- In relation to a **person**, the regulations may impose a ‘special restriction or requirement’ such as:

- o requiring a person to submit to a medical examination;
- o be removed to a hospital or other suitable establishment;
- o be detained in a hospital or other suitable establishment;
- o keep a person in isolation or quarantine;
- o require a person to vaccinated or to receive other prophylactic treatment;
- o a person to be disinfected or decontaminated;
- o that the person wear protective clothing;
- o that the person provide information or answer questions about the person’s health or other circumstances;
- o that the person’s health be monitored and the results reported;
- o that the person attend training or advice sessions on how to reduce the risk of infecting or contaminating others;
- o that the person be subject to restrictions as to where the person may go or with whom the person has contact;
- o that the person abstain from working or trading.

- In relation to a **thing**, the regulations may impose a ‘special restriction or requirement’ such as:

- o that the thing be seized or detained;
- o that the thing be kept in quarantine;

- o that the thing be disinfected or decontaminated;
- o in the case of a dead body, that the body be buried or cremated;
- o in any other case, that the thing be destroyed or disposed of.
- In relation to **premises**, the regulations may impose a ‘special requirement or restriction’ such as:
 - o that the premises be closed;
 - o that, in the case of a vehicle or movable structure, the premises be detained;
 - o that the premises be disinfected or decontaminated;
 - o that, in the case of a building, structure, mobile home or vehicle, the premises be destroyed.
- The regulations may also make provision as to:
 - o imposing duties on registered medical practitioners or other persons to record and notify cases or suspected cases of infection or contamination;
 - o conferring on the Regional Agency or other persons functions in relation to the monitoring of public health risks;
 - o a requirement that a child is to be kept away from school;
 - o a prohibition or restriction relating to the holding of an event or gathering, a restriction or requirement relating to the handling, transport, burial or cremation of dead bodies or the handling, transport or disposal of human remains.

144. Specific provision will be made prohibiting regulations that impose or enable the imposition of a requirement that a person undergoes medical treatment. Medical treatment does not include vaccination and other prophylactic treatment.

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⁵ 94. The Bill will make provision to define a “related thing” to mean:

- a thing which has or may have infected or contaminated the thing, or a thing which has or may have been infected or contaminated by that thing;
- a thing which has or may have infected or contaminated any of the things in the group, or a thing which has or may have been infected or contaminated by any such thing.

⁶ **Power to require a head teacher to provide contact details of pupils**

155. The Department proposes to make provision giving the PHA the power to require that a head teacher provides PHA with the names and contact details of the pupils at that head teacher’s school, where the PHA has served a notice on a parent of a child requiring them to keep a child away from school.

156. The PHA may serve a notice on the head teacher requiring them to provide a list of the names, addresses and contact telephone numbers for all the pupils of that school, or such group of pupils attending that school as it may specify, where PHA is satisfied that:

- 1) a person who is or has recently been on the school’s premises is or may be infected or contaminated;
- 2) the infection or contamination is one which presents or could present significant harm to human health;
- 3) there is a risk that the person may have infected or contaminated pupils at the school;
- 4) it is necessary for PHA to have the list in order to contact those pupils with a view to ascertaining whether they are or may be infected or contaminated; and
- 5) requiring the list (and contacting those pupils which may be infected or contaminated) is a proportionate response to the risk presented by the person.

157. The notice must:

- 1) specify a time limit for meeting the requirement;
- 2) specify an address where the list is to be sent;
- 3) provide contact details for an officer of PHA who is able to discuss the notice.

158. The head teacher will be guilty of an offence if they fail without reasonable excuse to comply with the notice and will be liable on summary conviction to a fine not exceeding level 1 on the standard scale (£200).

⁷ 172. Regulations that include provision imposing a requirement on persons to be vaccinated or to receive other prophylactic treatment must:

- provide for exemptions from that requirement; and
- include provision about how a person who is entitled to an exemption is to evidence that entitlement.

⁸ 202. Recommendation 5 of the Bingham report makes proposals in respect of the draft affirmative procedure for making domestic health protection regulations. Section 45Q(2) & (4) of the Public Health (Control of Disease) Act 1984 – Parliamentary control - which the Department is minded to replicate, whereby active parliamentary approval of a statutory instrument (a statutory rule in Northern Ireland) is required in advance of it being made and coming into force. Recommendation 5 proposes the following amendments:

- The four legislatures should be consulted on the minimum amount of time needed to ensure proper scrutiny of draft affirmative regulations, with a view to an expedited draft affirmative scrutiny procedure being developed for public health emergencies, without making scrutiny weaker than it would be under the made affirmative procedure;
- Impact assessments should be laid before the legislature in advance of the approval debate for draft affirmative regulations;
- Draft affirmative regulations should expire after six months;
- If any provision within the draft affirmative regulations is to be continued in substantially the same form beyond six months, an impact evaluation should be provided to the legislature in advance of the approval debate.